

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF TEXAS  
3 SAN ANGELO DIVISION

3 UNITED STATES OF AMERICA )  
4 VS. ) CAUSE NO. 6:15-CR-030-C  
5 RAFAEL ANTONIO MARIN-PINA )

6  
7 -----  
8 TRANSCRIPT OF TRIAL - VOLUME 2 OF 2  
9 BEFORE THE HONORABLE SAM R. CUMMINGS,  
10 SENIOR UNITED STATES DISTRICT JUDGE, AND A JURY.

11 TUESDAY, FEBRUARY 2, 2016  
12 LUBBOCK, TEXAS  
13 -----

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1 P R O C E E D I N G S

2 THE COURT: Be seated, please.

3 Members of the jury, you have now heard all of the  
4 evidence in the case and soon will hear the final arguments of  
5 the lawyers for the parties.

6 It becomes my duty, therefore, to instruct you on  
7 the rules of law that you must follow and apply in arriving at  
8 your decision in the case.

9 In any jury trial, there are, in effect, two  
10 judges. I am one of the judges; the other is the jury. It is  
11 my duty to preside over the trial and to decide what evidence  
12 is proper for your consideration. It is also my duty at the  
13 end of the trial to explain to you the rules of law that you  
14 must follow and apply in arriving at your verdict.

15 First, I will give you some general instructions  
16 which apply in every case, for example, instructions about  
17 burden of proof and how to judge the believability of  
18 witnesses. Then I will give you some specific rules of law  
19 about this particular case, and finally I will explain to you  
20 the procedures you should follow in your deliberations.

21 You, as jurors, are the judges of the facts, but in  
22 determining what actually happened, that is, in reaching your  
23 decision as to the facts, it is your sworn duty to follow all  
24 of the rules of law as I explain them to you.

25 You have no right to disregard or give special

1 attention to any one instruction, or to question the wisdom or  
2 correctness of any rule I may state to you. You must not  
3 substitute or follow your own notion or opinion as to what the  
4 law is or ought to be. It is your duty to apply the law as I  
5 explain it to you, regardless of the consequences.

6 It is also your duty to base your verdict solely  
7 upon the evidence, without prejudice or sympathy. That was the  
8 promise you made and the oath you took before being accepted by  
9 the parties as jurors, and they have the right to expect  
10 nothing less.

11 The indictment or formal charge against a defendant  
12 is not evidence of guilt. Indeed, the defendant is presumed by  
13 the law to be innocent. The defendant begins with a clean  
14 slate. The law does not require a defendant to prove his  
15 innocence or produce any evidence at all.

16 The government has the burden of proving the  
17 defendant guilty beyond a reasonable doubt, and if it fails to  
18 do so, you must acquit the defendant. While the government's  
19 burden of proof is a strict or heavy burden, it is not  
20 necessary that the defendant's guilt be proved beyond all  
21 possible doubt. It is only required that the government's  
22 proof exclude any reasonable doubt concerning the defendant's  
23 guilt.

24 A reasonable doubt is a doubt based upon reason and  
25 common sense after careful and impartial consideration of all

1 the evidence in the case. Proof beyond a reasonable doubt,  
2 therefore, is proof of such a convincing character that you  
3 would be willing to rely and act upon it without hesitation in  
4 the most important decisions of your own affairs.

5 As I told you earlier, it is your duty to determine  
6 the facts. To do so, you must consider only the evidence  
7 presented during the trial. Evidence is the sworn testimony of  
8 the witnesses, including stipulations, and the exhibits. The  
9 questions, statements, objections, and arguments made by the  
10 lawyers are not evidence.

11 The function of the lawyers is to point out those  
12 things that are most significant or most helpful to their side  
13 of the case, and in so doing to call your attention to certain  
14 facts or inferences that might otherwise escape your notice.  
15 In the final analysis, however, it is your own recollection and  
16 interpretation of the evidence that controls in the case. What  
17 the lawyers say is not binding upon you.

18 Also, do not assume from anything I may have done  
19 or said during the trial that I have any opinion concerning any  
20 of the issues in this case. Except for the instructions to you  
21 on the law, you should disregard anything I may have said  
22 during the trial in arriving at your own verdict.

23 In considering the evidence, you are permitted to  
24 draw such reasonable inferences from the testimony and exhibits  
25 as you feel are justified in the light of common experience.

1 In other words, you may make deductions and reach conclusions  
2 that reason and common sense lead you to draw from the facts  
3 which have been established by the evidence.

4 Do not be concerned about whether evidence is  
5 direct evidence or circumstantial evidence. You should  
6 consider and weigh all of the evidence that was presented to  
7 you.

8 The law makes no distinction between the weight to  
9 be given either direct or circumstantial evidence. But the law  
10 requires that you, after weighing all of the evidence, whether  
11 direct or circumstantial, be convinced of the guilt of the  
12 defendant beyond a reasonable doubt before you can find the  
13 defendant guilty.

14 I remind you that it is your job to decide whether  
15 the government has proved the guilt of the defendant beyond a  
16 reasonable doubt. In do so, you must consider all of the  
17 evidence. This does not mean, however, that you must accept  
18 all of the evidence as true or accurate.

19 You are the sole judges of the credibility or  
20 believability of each witness and the weight to be given to the  
21 witness's testimony. An important part of your job will be  
22 making judgments about the testimony of the witnesses,  
23 including the defendant who testified in this case. You should  
24 decide whether you believe all, some part, or none of what each  
25 person had to say, and how important that testimony was. In

1 making that decision, I suggest that you ask yourself a few  
2 questions: Did the witness impress you as honest? Did the  
3 witness have any particular reason not to tell the truth? Did  
4 the witness have a personal interest in the outcome of the  
5 case? Did the witness have any relationship with either the  
6 government or the defense? Did the witness seem to have a good  
7 memory? Did the witness clearly see or hear the things about  
8 which he testified? Did the witness have the opportunity and  
9 ability to understand the questions clearly and answer them  
10 directly? Did the witness's testimony differ from the  
11 testimony of other witnesses? These are a few of the  
12 considerations that will help you determine the accuracy of  
13 what each witness said.

14 The testimony of the defendant should be weighed  
15 and his credibility evaluated in the same way as that of any  
16 other witness.

17 Your job is to think about the testimony of each  
18 witness you have heard and decide how much you believe of what  
19 each witness had to say. In making up your mind and reaching a  
20 verdict, do not make any decisions simply because there were  
21 more witnesses on one side than on the other. Do not reach a  
22 conclusion on a particular point just because there were more  
23 witnesses testifying for one side on that point. You will  
24 always bear in mind that the law never imposes upon a defendant  
25 in a criminal case the burden or duty of calling any witnesses

1 or producing any evidence.

2 If scientific, technical, or other specialized  
3 knowledge might assist the jury in understanding the evidence  
4 or in determining a fact in issue, a witness qualified by  
5 knowledge, skill, experience, training, or education may  
6 testify and state an opinion concerning such matters.

7 Merely because such a witness has expressed an  
8 opinion does not mean, however, that you must accept this  
9 opinion. You should judge such testimony like any other  
10 testimony. You may accept it or reject it or give it as much  
11 weight as you think it deserves, considering the witness's  
12 education and experience, the soundness of the reasons given  
13 for the opinion, and all other evidence in the case.

14 You have been told that the defendant was found  
15 guilty in 1997 of aggravated domestic battery. This conviction  
16 has been brought to your attention only because you may wish to  
17 consider it when you decide, as with any witness, how much of  
18 the defendant's testimony you will believe in this trial. The  
19 fact that the defendant was previously found guilty of that  
20 crime does not mean that the defendant committed the crime for  
21 which the defendant is on trial, and you must not use this  
22 prior conviction as proof of the crime charged in this case.

23 The defendant is charged in the single-count  
24 indictment with violating Title 8, United States Code,  
25 Section 1326(a), which makes it a crime for an alien to enter,



1 to be found in, or attempt to enter the United States without  
2 consent of the Secretary of the Department of Homeland Security  
3 or the Attorney General of the United States to apply for  
4 readmission after being deported, removed, excluded or denied  
5 admission.

6 For you to find the defendant guilty of this crime,  
7 you must be convinced that the government has proved each of  
8 the following beyond a reasonable doubt:

9 First, that the defendant was an alien at the time  
10 alleged in the indictment;

11 Second, that the defendant had previously been  
12 deported, denied admission, excluded, or removed from the  
13 United States;

14 Third, that thereafter the defendant knowingly  
15 entered, or was found in, or attempted to enter the  
16 United States; and

17 Fourth, that the defendant had not received the  
18 consent of the Secretary of the Department of Homeland Security  
19 or the Attorney General of the United States to apply for  
20 readmission to the United States since the time of the  
21 defendant's previous deportation.

22 An alien is any person who is not a natural-born or  
23 naturalized citizen of the United States.

24 The word "knowingly," as that term has been used  
25 from time to time in these instructions, means that the act was

1 done voluntarily and intentionally, not because of mistake or  
2 accident.

3 The defendant claims that if he committed the acts  
4 charged in the indictment, he did so only because he was forced  
5 to commit the crime. If you conclude that the government has  
6 proved beyond a reasonable doubt that the defendant committed  
7 the crime as charged, you must then consider whether the  
8 defendant should nevertheless be found not guilty because his  
9 actions were justified by duress or coercion.

10 The defendant's actions were justified, and  
11 therefore he is not guilty, only if the defendant has shown by  
12 a preponderance of the evidence that each of the following four  
13 elements is true. To prove a fact by a preponderance of the  
14 evidence means to prove that the fact is more likely so than  
15 not so. This is a lesser burden of proof than to prove a fact  
16 beyond a reasonable doubt.

17 The four elements which the defendant must prove by  
18 a preponderance of the evidence are as follows:

19 First, that the defendant was under an unlawful  
20 present, imminent, and impending threat of such a nature as to  
21 induce a well-grounded fear of death or serious bodily injury  
22 to himself;

23 Second, that the defendant had not recklessly or  
24 negligently placed himself in a situation in which it was  
25 probable that he would be forced to choose the criminal

1       conduct;

2               Third, that the defendant had no reasonable legal  
3       alternative to violating the law, that is, he had no reasonable  
4       opportunity to avoid the threatened harm; and

5               Fourth, that a reasonable person would believe that  
6       by committing the criminal action, he would directly avoid the  
7       threatened harm.

8               You will note that the indictment charges that the  
9       offense was committed on or about a specified date. The  
10      government does not have to prove that the crime was committed  
11      on that exact date, so long as the government proves beyond a  
12      reasonable doubt that the defendant committed the crime on a  
13      date reasonably near September 13, 2015, the date stated in the  
14      indictment.

15              You are here to decide whether the government has  
16      proved beyond a reasonable doubt that the defendant is guilty  
17      of the crime charged. The defendant is not on trial for any  
18      act, conduct, or offense not alleged in the indictment.  
19      Neither are you called upon to return a verdict as to the guilt  
20      of any other person or persons not on trial as a defendant in  
21      this case, except as you are otherwise instructed.

22              If the defendant is found guilty, it will be my  
23      duty to decide what the punishment will be. You should not be  
24      concerned with punishment in any way. It should not enter your  
25      consideration or discussion.

1           Our system of law does not permit jurors to be  
2           governed by sympathy, prejudice, or public opinion. Both the  
3           parties and the public expect that you will carefully and  
4           impartially consider all the evidence in the case, follow the  
5           law as stated by the Court, and reach a just verdict,  
6           regardless of the consequences.

7           All persons stand equal before the law and are to  
8           be dealt with as equals in a court of justice. Keep constantly  
9           in mind that it would be a violation of your sworn duty to base  
10          your verdict upon anything other than the evidence in the case.

11          To reach a verdict, whether it is guilty or not  
12          guilty, all of you must agree. Your verdict must be unanimous  
13          on the indictment. Your deliberations will be secret. You  
14          will never have to explain your verdict to anyone.

15          It is your duty to consult with one another and to  
16          deliberate in an effort to reach agreement if you can do so.  
17          Each of you must decide the case for yourself, but only after  
18          an impartial consideration of the evidence with your fellow  
19          jurors. During your deliberations, do not hesitate to  
20          re-examine your own opinions and change your mind if convinced  
21          that you were wrong. But do not give up your honest beliefs as  
22          to the weight or effect of the evidence solely because of the  
23          opinion of your fellow jurors, or for the mere purpose of  
24          returning a verdict.

25          Remember at all times, you are judges, judges of

1 the facts. Your duty is to decide whether the government has  
2 proved the defendant guilty beyond a reasonable doubt.

3 When you go to the jury room, the first thing that  
4 you should do is select one of your number as your foreperson,  
5 who will help to guide your deliberations and will speak for  
6 you here in the courtroom.

7 A verdict form has been prepared for your  
8 convenience.

9 The foreperson will write the unanimous answer of  
10 the jury in the space provided, either guilty or not guilty.  
11 At the conclusion of your deliberations, the foreperson should  
12 date and sign the verdict.

13 If you need to communicate with me during your  
14 deliberations, the foreperson should write the message and give  
15 it to the Court Security Officer. I will either reply in  
16 writing or bring you back into court to answer your message.

17 Bear in mind that you are never to reveal to any  
18 person, not even to the Court, how the jury stands, numerically  
19 or otherwise, until after you have reached a unanimous verdict.

20 The verdict of the jury reads as follows: "We, the  
21 jury, find the defendant, Rafael Antonio Marin-Pina, (answer  
22 guilty or not guilty in the space provided)," and then "as  
23 charged in the indictment in the above-styled and numbered  
24 cause."

25 The foreperson needs to sign this verdict form and

1 date the verdict form.

2 Mr. Haag?

3 MR. HAAG: Thank you, Your Honor. May it please  
4 the Court, Counsel.

5 Good morning, Ladies and Gentlemen of the Jury.  
6 This is the closing argument. I'm going to begin by talking to  
7 you a little bit about the elements of illegal re-entry after  
8 deportation. I'm going to go through these kind of quickly,  
9 because I don't think there's really any doubt that the  
10 defendant is guilty of the crime charged. I think that the  
11 arguments this morning are going to center on whether the  
12 defendant has proved the duress defense by a preponderance of  
13 the evidence.

14 The first element is that the defendant is an  
15 alien; in other words, a citizen and national of a country  
16 other than the United States. Looking at the evidence that we  
17 have brought before you here today, we have the defendant's  
18 admission, and that admission is corroborated by all of the  
19 documentary evidence recovered from the defendant's alien  
20 registration file, including, most notably, his birth  
21 certificate.

22 The second element is that the defendant had  
23 previously been deported from the United States of America. We  
24 brought before you at the trial the warrant of removal, the  
25 I-205, and that is the document showing that the defendant was

1 ordered deported from the United States, and it showed that an  
2 immigration officer physically removed him from the  
3 United States on August the 7th of 2008. Garland Timms  
4 testified that he compared the fingerprints taken directly from  
5 the defendant by Agent Felts with the fingerprint from the  
6 I-205, and it is, to a certainty, the same person.

7 Third element, after the defendant's deportation,  
8 he was found in the United States of America. You had the  
9 testimony of Lonnie Felts that on September the 13th of 2015,  
10 he identified the defendant as being in the country illegally,  
11 and he took custody of the defendant on October the 16th of  
12 2015.

13 And finally the last element, which is very  
14 verbose, but in short, he did not have permission to re-enter  
15 the United States. You had the defendant's admission that he  
16 did not have permission to re-enter the United States, and that  
17 admission was corroborated by Agent Felts' search of all the  
18 immigration databases showing that, in fact, he did not have  
19 permission.

20 Let's turn now to the duress or coercion defense,  
21 and there are four elements that I've put up here on the  
22 screen. You will have a copy of those with the Court's  
23 instructions, and so I'll let you read them in greater detail  
24 when you go back to the jury room.

25 But there are two things I want to talk about, and

1 let's first talk about the credibility of the witnesses. Your  
2 first step in analyzing the duress defense is, what's the  
3 credibility of the testimony that the defendant brought before  
4 you yesterday?

5 The first thing I want to point out is a pattern  
6 that we're going to loop back to. The defendant's perception  
7 when facing consequences. You will recall yesterday when he  
8 testified, he testified that--when we were talking about why he  
9 was initially picked up by immigration authorities, he said,  
10 well, it was really because the California Department of  
11 Corrections kept me six months longer, and that's why they had  
12 to get immigration authorities involved.

13 And then we went to the immigration proceedings and  
14 he said, well, really, they just told me to sign this  
15 paperwork; I signed the paperwork, and all of a sudden I was  
16 deported.

17 And what we're going to see is, there's a pattern,  
18 is that when the defendant is forced to face the consequences  
19 of his choices, his perceptions about why he is now facing  
20 those consequences is not in accordance with reality.

21 I want you to ask yourself, in evaluating the  
22 testimony of the defendant and his wife and the expert that the  
23 defense brought to you, are their actions consistent with  
24 someone in impending, imminent fear or danger? The defendant  
25 and his wife testified that they were absolutely terrified.



1 The cartel was after them, their lives were in danger, they  
2 were on the run. And yet, according to his wife, her and the  
3 kids are going back to this place where they're hunted by the  
4 cartel every single weekend. Does that make sense? In your  
5 common experience and common sense, if there is a place of  
6 danger, would you go back there every weekend? More  
7 importantly, would you allow your wife and kids to go back  
8 there every weekend?

9 The defendant testified that weeks or months passed  
10 between the time when cartel members allegedly shot at him and  
11 when he fled Acuna. Does that make sense? If you were shot  
12 at, would you waste any time at all in fleeing? Would you  
13 wait?

14 And this ties in to the next point. The defense  
15 talks about how the cartel is this pervasive, dominant,  
16 all-influencing entity in Acuna. They run everything. They  
17 run the government, they run the police. If they want you,  
18 they will get you.

19 But you contrast this with their seemed  
20 incompetence or inability to track down the defendant. And he  
21 testified that he fled to his church friend's residence. And  
22 what does he do? He gets a voter identification card with the  
23 address he's staying at. So he goes to the government entities  
24 that are controlled by the cartel and says, "This is where I  
25 live." And despite telling the cartel, in effect, where he

1 lived, they couldn't find him? Does that make sense?

2 And then looping back to my original point, the  
3 defendant had numerous encounters with law enforcement. You've  
4 heard about all the times that the Tom Green County Sheriff's  
5 Office was called out to the residence. You heard about the  
6 fact that when he crossed the border, he had encounters with  
7 immigration authorities. All those contacts with law  
8 enforcement and not once does he ever tell them, "I am in fear  
9 of my life, the cartel is hot on my heels," not once. It's  
10 only until he is called to court to face criminal immigration  
11 consequences that, all of a sudden, the story begins.

12 And again, looping back to my first point, that's  
13 the pattern you see, isn't it? When the defendant is called to  
14 account for his conduct, when he's called to account for his  
15 felony conviction by being removed from the United States, he  
16 creates a story to justify it. When he's called here today to  
17 account for his conduct in illegally entering and remaining in  
18 the United States of America, all of a sudden, he's in fear for  
19 his life from the cartel.

20 Let's talk about a couple of the elements.  
21 Unlawful present, imminent, and impending threat. You're going  
22 to read that that's one of the elements of the duress defense.  
23 Before I talk about it, we need to sort of have a common  
24 definition of what that means. So I would like everyone here  
25 to think in your mind of the person that you hold most dear.

1 It can be wife, husband, kids, mom, dad, brother, sister,  
2 whoever. Get that person in your mind. If I told you that  
3 person is under present, imminent, and impending threat of  
4 death, would any of you stay and listen to the rest of my  
5 closing argument? You would vault this rail and be gone.  
6 That's what present, imminent means. Right here, right now.

7 The evidence that the defendant brought before you  
8 is that he illegally entered the United States sometime in  
9 early 2014. He was apprehended, or at least identified,  
10 September the 13th of 2015. And so it points out the absurdity  
11 of his argument. Imminent: right here, right now. His claim,  
12 imminent: a year and a half or more? Would anybody define  
13 "imminent" as a year and a half? Of course not. On this point  
14 alone-- The defendant has to establish all four elements,  
15 every single one. He fails right here. There's no possible  
16 way he can establish this element.

17 Let's talk about another element: no reasonable  
18 legal alternative. No reasonable legal alternative means just  
19 that. There is not one alternative. My only choice, my only  
20 choice was to violate the law. If there's any other choice,  
21 the defense fails.

22 Here, the defendant had numerous legal alternatives  
23 he could have taken besides illegally entering the  
24 United States. Number one, relocated to another area of  
25 Mexico. The defendant and his wife proved this to you with

1 their own testimony. They testified that in Yucatan, they had  
2 no problems. No threats, no cartel members after them, no  
3 danger. There's their first alternative. Move back to  
4 Yucatan. Move away from the violence.

5 Second, they could have approached the  
6 United States Embassy, Consulate, Diplomatic Mission, filed the  
7 paperwork for refugee status. The defendant's wife testified  
8 that's what she was in the process of doing.

9 Or, lastly, even if they thought, for whatever  
10 reason, they couldn't get asylum, the United States is not the  
11 only country in North America, or Central America or South  
12 America. Canada, any of the countries in Central America, any  
13 of the countries in South America. Apply for refugee status,  
14 asylum status in any one of those countries.

15 As long as you find one reasonable alternative, the  
16 defense fails. Here, you have several. Because we have proven  
17 the defendant's guilt beyond any doubt and because his defense  
18 fails, I ask you to return the only possible verdict based on  
19 the evidence, and that is guilty. Thank you.

20 MR. SLOAN: Thank you, Your Honor. May it please  
21 the Court.

22 About ten and a half years ago, I had renal cell  
23 carcinoma. It's a cancerous tumor in one of my kidneys. Went  
24 to the doctor; gave me some choices. He said, because of where  
25 it was, I could take out your kidney; operation might kill you.

1 Or leave it in; cancer will kill you. I didn't get to choose  
2 not to have cancer. Sometimes life puts you in a situation  
3 where you have no good choices.

4 And the government has proven the elements of their  
5 case, I mean, as far as the illegal re-entry. I mean, he was  
6 deported; he came back. Didn't have paperwork. But--and we  
7 talked about that in voir dire. We talked about respecting the  
8 immigration laws of our country. But if we're going to-- We  
9 don't get to be choosy about what laws we respect. If you  
10 respect the laws of immigration, you also have to respect all  
11 of the law, and that includes the law of justification. Has a  
12 longer history than the law of immigration. It's been a part  
13 of our law for a very long time. And justification based on  
14 duress is just as much a part of the law that you have to  
15 follow as the immigration laws are.

16 So let's talk about duress. And the Judge has  
17 given you some elements of what constitutes duress. Was the  
18 defendant under an unlawful present, imminent, and impending  
19 threat of such a nature as to induce a well-grounded fear of  
20 death or serious bodily injury to himself? Well, they tried to  
21 actually kill him. So, you know-- And it's not imminent,  
22 like, every day I'm walking around and someone has got a gun to  
23 my head. This is not that kind of world south of the border.  
24 You know, this isn't Lubbock, Texas. This is Mexico, and  
25 things are different down there. And it's imminent in the

1 sense is that it could happen any minute because he was  
2 specifically targeted.

3 It's not a general threat. It's not like, you  
4 know, Mr. Haag talked about yesterday, well, couldn't every  
5 Mexican in Acuna claim duress? No, because none of them had  
6 been specifically pointed out. None of them had a specific hit  
7 on them. Because they thought he was DEA. And he looks like a  
8 DEA guy. That's not his fault. He didn't recklessly make  
9 himself look like a DEA agent. He didn't-- You know, he got  
10 himself a German Shepherd. And, you know, I thought about  
11 this. There's really nothing he did. He didn't engage in any  
12 kind of criminal activity, didn't join any conspiracy with  
13 them. He just looked the way he looked. And that's not  
14 placing himself in that situation.

15 Did he have a reasonable legal alternative to  
16 violating the law? And, you know, Mr. Haag put up a bunch--  
17 asylum and going to Canada--which I don't know how you get to  
18 Canada without going through the U.S.--or going south to South  
19 American countries where the drugs come from. I don't think  
20 these are reasonable legal alternatives, because-- When I was  
21 a kid, I used to do these carpentry deals with my dad, and he  
22 said, when you measure wood, you have to think in inches, not  
23 yards. I was, like, okay. Never understood what that meant  
24 because I was a kid.

25 But, you know, the government is thinking in yards

1 here, because these-- The Judge's instruction to you is that  
2 the alternatives have to be reasonable, not fantasy, not things  
3 that take months when the threat is not in months. You know,  
4 applying to asylum-- Well, okay. First of all, immigrating to  
5 Canada, again, geographically, not easy to do. But suppose you  
6 could get there, so then he's breaking Canada's law by getting  
7 into that country, unless he goes through the lawful  
8 immigration process, which takes months, and he's a guy who is  
9 hiding out at a friend's house from church, afraid to open the  
10 front door. So how does he go down to the Visa office? How  
11 does he go down the street? How does he-- You know, these are  
12 not reasonable--these are not reasonable alternatives, because  
13 they're physically not reasonable for him to do. They sound  
14 great. Seek asylum. Go to the American Consulate and seek  
15 asylum.

16 They don't have asylum houses down there. They  
17 don't have safe houses where people seeking asylum get to stay.  
18 You go down to the asylum office, you fill out a paperwork and  
19 say, "I want asylum," they say, "Okay, go back home, we'll let  
20 you know." That can take weeks, months, years before they let  
21 you know. In the meantime, that threat hasn't gone away.  
22 You're still living right where you were living. If there were  
23 asylum houses-- You know, talk about expert witnesses. I  
24 brought in Mr. Barrientos, who's a former Border Patrol expert,  
25 spent a lot of time on the border, and he told you what it's

1       like down there.

2               And if the government wanted to say it's not like  
3       that down there, they have their own expert witness, Mr. Felps,  
4       who's sitting right here, sat here through the whole trial, and  
5       he could have got up and said, "You know what, I've been on the  
6       border for 20 years, and Mr. Barrientos isn't saying how it  
7       is." But he didn't. They have their own immigration expert  
8       right here. If they wanted to say, "Oh, well, you know, he  
9       could have really got asylum," they could have brought him up  
10      and said, "You know what, here's how he would have done it,"  
11      but they didn't, because he can't.

12             And again, that's yards. That's long thinking when  
13      the time is short. That's the problem with every one of these  
14      alternatives they bring up. They have already tried to shoot  
15      him in the street. They tried to kill him. And that changes  
16      things. And so when we're talking about, well, he got to move  
17      around in Yucatan all he wanted to, that was way before. That  
18      was before they picked him out. That was before they had  
19      targeted him. Of course he could move around Yucatan all he  
20      wanted, because this is the difference between a general threat  
21      and a specific threat.

22             A general threat, that's the threat everybody in  
23      Mexico lives under. And you know what, I bet you there's  
24      places in Mexico where the people live boring and safe lives.  
25      I bet you there are places in Mexico, you know, the gated



1 communities and the expat communities, the tourist communities  
2 where everything is fine. But underneath that, there's this  
3 corruption, this abyss. And it's not until you get drawn into  
4 that that the threat becomes specific to you.

5 I can't imagine the just plain evil that would be  
6 involved in a busload of kids-- I had a good friend of mine  
7 who was a Jewish lawyer, and he once said to me--he was an  
8 Orthodox Jew. He's got the beard and the hat. And he once  
9 said to me, "You know, there has to be a limit on how bad  
10 people can be to each other." And, you know, one of the things  
11 I saw in this case is that there's not.

12 And so when we talk about the imminence of the  
13 threat-- This is not something without parallel in the  
14 American experience, you know. In the 1940's, 1950's, the big  
15 thing was the Mafia in New York. If you ratted on the Mafia,  
16 they would come to find you wherever you were and they would  
17 kill you. And that was an imminent, present threat. Even  
18 though there wasn't a Mafia car in front of your house every  
19 day, that's an imminent, present threat, and you have to act to  
20 avoid that.

21 And, you know, when he talked about the people that  
22 live the normal lives in Mexico and that don't encounter the--  
23 that's what Mr. Marin was the first time that he ran into these  
24 guys. And, you know, they took him in a house and they made  
25 him strip off his clothes. Can you imagine? I would have run

1 right there. That's when I would run. It's just surreal the  
2 way things are down there, the things that happen. It's like  
3 an alternate reality. And that is the way it is. It's  
4 uncontroverted from Mr. Barrientos that that's how it is.

5 And Mr. Haag wanted to argue about, well, they  
6 could have gone to the cops.

7 And Mr. Barrientos says, 90 percent of them are  
8 corrupt.

9 Well, are you sure it's 90 percent? Well, what if  
10 it's only 50 percent?

11 I mean, if you put a gun to your head, does it  
12 matter if there's only three bullets or five? You're still  
13 putting a gun to your head. Going to the police in Mexico is  
14 not an option. It's not even--it's not at all reasonable.

15 I thought about, you know, the reason he got picked  
16 out. And from the Mexican Mafia guy's point of view, it makes  
17 a lot of sense, really. I mean, he looks military. Every  
18 morning, he's out walking a police dog around the neighborhood  
19 where their criminal activities are going on. I mean, he  
20 doesn't have a steady job. He doesn't speak good Spanish. His  
21 Spanish is like he's from America. He has a military bearing  
22 in the way he walks. He looks like a federal agent. To the  
23 Mexican criminals running these neighborhoods, he fits a  
24 profile, kind of a reverse profile. Right? I mean, we talk  
25 about police profiling people. They profiled him, except it's

1 not a case where it's like due process and you get to prove  
2 you're not a federal agent. It's like you-- And I don't know  
3 who started the rumor at the first place he lived at. But once  
4 that rumor got attached to him, then his days in Mexico were  
5 numbered. I mean, that's the reality. There was some-- You  
6 know, from the Mexican gang point of view, it's, like, okay, we  
7 think he's a federal agent; we'll make him run some dope. You  
8 know, we know his wife crosses the border; maybe we'll make a  
9 little money that way. He can prove he's not a federal agent.

10 And then suddenly some stuff starts happening in  
11 Acuna. Government raids. And interesting, minutes after they  
12 do this deal where they try to chase her and block her in at  
13 the house, a gunfight breaks out in the street between  
14 government officials and these cartel guys. What are they  
15 supposed to think? She called it in. Who is he and how come  
16 the GATE, a paramilitary organization from the government,  
17 shows up months after he arrives and start hitting specific  
18 targets in Acuna? Because he's tipping them off. Right?

19 But he's not. But that's why he fits the profile,  
20 and that's why the duress changes. It's no longer this sort  
21 of, like, we'll see what we can get out of him. It's, like, we  
22 know who he is, and that's when they say he has to die and they  
23 try to kill him in the street.

24 And he goes from there--he doesn't--I mean, he goes  
25 home--I don't know--he goes home, gets some stuff, and he goes

1 and stays at his friend's house from church, hiding out, afraid  
2 to go out the front door. That's not-- And, you know, these  
3 weekend visits--she didn't say she went down every weekend  
4 and--she says maybe every weekend and-- You remember the  
5 testimony the way you remember it. But from the time after  
6 that shooting happened until the time she went and got him,  
7 there weren't visits happening then.

8 And as far as that address on the identification  
9 card, they applied for that address, you know, months before  
10 this stuff started happening. So, you know, that's not like,  
11 oh, well, then maybe they weren't really scared. They were  
12 really scared, and they had every reason to be scared.

13 Even the government's DEA guy--I mean, the  
14 government's immigration guy, he knows about the DEA guy, Kiki  
15 Camarena. He knows what happened. He was tortured and killed,  
16 like other DEA agents in Mexico have been killed, like  
17 immigration officers have been killed, like hundreds of Mexican  
18 nationals have been killed. There are mass graves in Mexico.  
19 It's not the reality that we experience here.

20 So Mr. Haag talked about credibility of the  
21 witnesses. And, okay, so how do we-- I'll tell you this. As  
22 far as the elements of duress, if Rafael and Bibiana are  
23 telling the truth about what happened in Mexico, they were  
24 absolutely under duress. That's--I mean, that's the truth. So  
25 how do we tell if they're telling the truth? Well, sometimes

1     it's easy. I know Bibiana is telling the truth, and you know  
2     it too, for two reasons. Number one, she admitted to smuggling  
3     him across the border. That's a crime. And if the two of them  
4     had cooked up some kind of story, she wouldn't have come in  
5     here and told you that. She got on the stand under oath and  
6     admitted to committing a federal felony because she was telling  
7     you the truth. That's litmus test number one.

8             Number two, they stopped at a park. And the  
9     government is going to say, well, that shows they weren't  
10    really scared or weren't really-- But, I mean, think about it.  
11    You escape a place where you're worried about death. You get  
12    across the border; you get through the checkpoint. Imagine the  
13    relief. Stopping at a park makes perfect sense.

14            And the fact that--I mean, if they had cooked up a  
15    story, there wouldn't have been any stopping at a park. And, I  
16    mean, you saw her on the testimony. She screwed up her dates,  
17    and there were inconsistencies between what they perceived.  
18    The first house was, like, she heard that the rumors--there  
19    were people asking her questions about him being a federal  
20    agent. He didn't hear that. If they had cooked this thing up  
21    together, their stories would be lockstep together.

22            But I thought about it. It makes perfect sense  
23    that she would have heard about it and he wouldn't have. They  
24    wouldn't be asking him. They would be asking her. So the  
25    inconsistencies make sense, but if they had cooked it up, they

1 wouldn't make sense.

2 As for Rafael, you know, they had a big argument  
3 about what happened in 1996-97. Yeah, he blames the California  
4 Department of Corrections, blames the immigration people,  
5 thought it was unfair, whatever. Who cares? Has nothing to do  
6 with this case. But it matters to him, so he made a big deal  
7 out of it. Was he honorably discharged? Did he have a general  
8 discharge? Matters to him, so he wanted to argue about that,  
9 and--because it was important to him. That shows you his  
10 earnestness. He's putting himself out-- He said, I relapsed  
11 into alcohol. You know, he's putting himself out there. This  
12 is the way it is.

13 There's things about what happened in Mexico that--  
14 You know, first of all, what he describes dovetails with what  
15 Mr. Barrientos described as the culture down there. He said,  
16 yeah, the conduct, the trying to get her to run stuff across  
17 the border, the searching of the house, all these things match  
18 the way that Mr. Barrientos says things happen down there. And  
19 if the government wants to say that's not how they happen,  
20 here's the guy. He can come in and say it didn't happen that  
21 way; that's not really the way it is. But it is that way.  
22 They know that because they have lost people.

23 The fact that the guys say "Dea" instead of D-E-A,  
24 which if you just write the word "D-E-A" and then you pronounce  
25 it in Spanish, Dea. But they--that's how they say it. They

1 say Dea. I mean, that's a detail that you wouldn't know if you  
2 hadn't brushed into that.

3 The fact that they say "plomo or plata," which I  
4 didn't know what that meant before this case. You know, plomo  
5 is the lead; plata is the silver. You know, you get the bribe  
6 or you get the bullet. I thought it was interesting they  
7 talked about plomo or plata, because when you're talking about  
8 bribes, who do you bribe? You bribe officials. You bribe  
9 police. The fact that they offered him plomo or plata tells  
10 you they thought he was police of some kind.

11 The strangeness, the way he described the first  
12 encounter. You know, "At first, I thought these guys were just  
13 construction workers; then I thought they were kind of bullies  
14 intending to rob me, and I told them I didn't have a job." You  
15 know, that's--there's nothing dramatic about it. It's just  
16 kind of weird. And I think, you know, the weirdness of it  
17 tells you that it's truthful. Not that-- You know, because if  
18 he was making it up, there would be drama, there would be, oh,  
19 you know, machine guns and, you know, scary scuff, and it was  
20 really just this weird scary encounter that he had.

21 And knowing what I know now about Mexico, it's a  
22 miracle he got out of there. But to a mind like a tourist,  
23 which is what he had when he went down there, like an American  
24 tourist in Mexico, it was just this weird thing that was  
25 happening. "DEA, and then they said FBI, and then I realized

1       what they were asking me."

2               THE COURT:   You've got one minute.

3               MR. SLOAN:   If they told the truth about what  
4       happened in Mexico--and I think they did--then they were under  
5       duress, and I can't get worked up about someone doing exactly  
6       what any one of us would do in their shoes, and I don't think  
7       you should either.   They told the truth.   He's not guilty,  
8       because the law of justification is just as much the law as the  
9       immigration laws, and the judge has instructed you to follow  
10      that law, and I would ask you to do that.   Thank you.

11              MR. LONG:   May it please the Court.

12              THE COURT:   Yes, sir.

13              MR. LONG:   Counsel.

14              Mr. Sloan would never ask you to judge someone for  
15      doing the very thing that he would do, but he just told you--  
16      and I hope you caught it.   This is important.   He just told you  
17      that being strip-searched and having a gun pointed at you,  
18      flashed at you, who knows, being strip-searched by the cartel--  
19      you know it's the cartel--this is all coming to you so quickly,  
20      it's so terrifying.   Mr. Sloan, a reasonable man, he would have  
21      been gone.

22              So what does it say that if a reasonable man would  
23      see that situation, experience that, and be gone immediately,  
24      what does that sound like?   That sounds like an impending,  
25      immediate threat where you're not able to think about it,



1     you're not able to come up with a plan. You have to react.  
2     And that's what duress is for, for reasonable people put in  
3     those situations.

4             So what does it say when this defendant doesn't do  
5     that? Either you have to disbelieve that that ever happened,  
6     or you have to believe that, if it did happen, he didn't  
7     perceive it as such a threat that he would go home, gather his  
8     family, send them across the border where they go every day,  
9     and then follow them as soon as he could.

10            We now know how he crossed the border. They could  
11     have done it that way, the same way they did it, by having him  
12     smuggled across in their family vehicle, if that's what really  
13     happened. I submit to you that's suspect. That is suspect,  
14     how an adult male would be able to sit in the back of the  
15     vehicle and cross the border undetected after it going through  
16     two checkpoints. Maybe that's how it happened.

17            I want to pose to you a scenario. You're at your  
18     office, you're at the grocery store, and some nefarious  
19     character comes up to you; you think they're a gang member.  
20     And they say, "I know where you work, know where your kids go  
21     to school, and you're going to rob this bank. If you don't do  
22     it, bad things are going to happen."

23            Now, as Mr. Sloan has just stated, as I have just  
24     explained to you, a reasonable person, when they're allowed to  
25     get out of that situation, gets as far away from that situation

1 as they can. Right? Reports it, does something.

2 Let's say you don't do that. Let's say you go home  
3 and you tell your wife or your husband or whoever it is, "These  
4 people approached me at the supermarket and they said they know  
5 where we live, they know where our family is. They're going to  
6 harm us if we don't rob this bank."

7 So y'all talk about it and say, well, that seems  
8 kind of suspicious. No real, I guess, grave concern because  
9 you don't leave immediately and you don't report it to the  
10 authorities. So you talk about it a little bit more. We've  
11 got to find a way out of this situation. Maybe it's not for  
12 real, who knows.

13 Eventually you find a place for your wife and  
14 children to go. They are out of harm's way. They have left  
15 the country. They should be out of the reach of these bad men.  
16 But you're under such an impending threat and danger that you  
17 had your wife leave, that you're okay with her coming and  
18 visiting you every weekend, every weekend to be in the same  
19 environment, the same situation where they have just been  
20 threatened. So either you don't perceive the threat as really  
21 being that serious, or it didn't happen.

22 Ultimately the gang members approach you again, and  
23 let's say you think they try to shoot at you. Shootings happen  
24 a lot, let's say, in your neighborhood, but you think they try  
25 to shoot at you, and somehow you get away from this very

1 effective gang that builds mass graves. You talk to your wife  
2 over the phone where she's at in this other country and you  
3 say, hey, this bad thing is happening, but it's okay, please  
4 still come visit me, everything is okay. Please bring the  
5 kids, in fact. Keep doing what you're doing, come visit.  
6 We're going to have to come up with a plan to get me out of  
7 here or a plan to rob the bank.

8 Let's say ultimately you decide, we better rob this  
9 bank; we're being forced to do it. So you go and rob the bank.  
10 You get away with the bank robbery and you take the spoils back  
11 to your home, and months and months and months pass. And as  
12 officers come to your home for various reasons, you sit on the  
13 spoils of the bank robbery, at no point ever mentioning it.

14 You're guilty of bank robbery. You've robbed a  
15 bank. But you've got a valid duress claim. Right? They  
16 forced you to do it. But you never at all mention it to the  
17 authorities. It's only when they find out you're the bank  
18 robber that you say, okay, you got me, but here's why I did it.

19 That may sound a little foolish to you. That may  
20 sound like that doesn't really sound like a duress claim, and  
21 you would be right. Because you can't get caught for  
22 committing a crime and say "so-and-so made me do it" and then  
23 just get to walk away. That's not how it works. Duress is  
24 a high standard, and it applies to the defense. And the  
25 defense has to prove each of these four elements. If they fail

1 on any of these, it is not duress.

2 So when you look at the first one, unlawful  
3 present, imminent, impending threat of such a nature as to  
4 induce a well-grounded fear of death or serious bodily injury  
5 to himself, when you look at that, even if you assume all the  
6 things that happened to Mr. Marin-Pina happened, how impending  
7 is it when he tells you, I was able to run away from the--I was  
8 able to run away from them when they strip-searched me. I went  
9 back to the home where they know I lived, talked about it with  
10 my wife, we kept on business as usual. Months and months  
11 later, I get shot at. We talk about it on the phone, but  
12 again, I don't think the threat is so impending that I think  
13 you shouldn't come visit me and bring the kids.

14 It's only until, by his own statement, a month and  
15 a half, several weeks later that they come up with the plan to  
16 have him ride in the vehicle. Again, the same vehicle where  
17 the cartel is supposedly watching these border crossings, the  
18 same vehicle they watched her take the kids to school in. If  
19 they're so hot to get this guy, would it not have been easy for  
20 the cartel to follow his family to the residence where he was  
21 staying.

22 How imminent is that threat when he has escaped and  
23 is sitting there and has time to come up with a plan on how  
24 he's going to break the law? The truth is, this element goes  
25 to the idea if you have time to come up with a plan on how

1     you're going to best break the law, it can't be duress. I am  
2     going to disagree with Mr. Sloan. If everything Mr. Marin  
3     tells you is the truth, that is not duress because of this  
4     first element. Even if it's true, no duress.

5             The second states that he had not recklessly or  
6     negligently placed himself in a situation. You can argue they  
7     moved to Acuna, put themselves in that situation. You can  
8     argue he stayed there when he had the opportunity to leave.  
9     You don't even have to reach that. But he was in the situation  
10    because of choices he had made. There's no doubt about it.

11            Third, the defendant had no reasonable legal  
12    alternative. We kind of had these ethereal ideas of asylum,  
13    refugee status, could he go to other parts in the country,  
14    would he be able to make it to Yucatan, a place he's familiar  
15    with and has connections.

16            Here's what we know. He was threatened. How did  
17    he respond to that threat? He went to a neighbor's house and  
18    laid low--not a neighbor's house. He went to a friend's house  
19    and laid low. There's your reasonable legal alternative.

20            THE COURT: You have got one minute.

21            MR. LONG: Thank you, Your Honor.

22            He went to a friend's house and laid low. And I  
23    asked him specifically, what threats did you receive from the  
24    cartel while at the neighbor's house? None. You know he had a  
25    reasonable legal alternative. He was able to go to the

1 friend's house. You don't think the friend could take him  
2 anywhere he needs to go, the friend who would let him use his  
3 address, buy him a bus ticket, send him anywhere he can  
4 lawfully go, which is everywhere but the United States,  
5 everywhere but the United States. He fails on that ground as  
6 well.

7 The fourth ground, a reasonable person would  
8 believe, by committing the action, he would directly avoid the  
9 harm. He told you he still feels threatened today because the  
10 cartel is here. By his own statement, coming here didn't even  
11 cure him of his problems. So he could have gone anywhere else,  
12 because the cartel is everywhere.

13 Ladies and gentlemen, he's been proven guilty of  
14 illegally re-entering the country. The duress claim fails. We  
15 ask you to find him guilty.

16 THE COURT: Members of the jury, if you would,  
17 please, retire to the jury room. I'll send back to you the  
18 charge, along with the exhibits.

19 All rise for the jury.

20 (DELIBERATIONS COMMENCE AT 9:50 A.M.)

21 -----

22 (VERDICT RETURNED AT 10:10 A.M.)

23 THE COURT: Be seated, please.

24 All right. Has the jury reached a verdict in the  
25 case?

1 JURY FOREPERSON: We have, Your Honor.

2 THE COURT: Is that verdict unanimous?

3 JURY FOREPERSON: It is.

4 THE COURT: All right. If you would hand it to the  
5 marshal.

6 All right, Counsel. Follow along as I read the  
7 verdict.

8 "We, the jury, find the defendant, Rafael Antonio  
9 Marin-Pina, guilty as charged in the indictment."

10 The verdict form is signed by Kerry Siders,  
11 foreperson.

12 Does either side wish the Court to canvass the  
13 jury?

14 MR. LONG: No, Your Honor.

15 MR. SLOAN: No, Your Honor.

16 THE COURT: All right. The Court then will accept  
17 the verdict of the jury.

18 Members of the jury, thank you very much for  
19 serving in this case. You are now excused from any further  
20 service.

21 All rise for the jury.

22 (THE JURORS EXIT THE COURTROOM)

23 THE COURT: All right. Be seated, please.

24 I'm going to order a presentence investigation.

25 Mr. Marin, you have the right to have your attorney present at

1 the time that you're interviewed by the probation officer.

2 Court will stand adjourned.

3 (END OF TRIAL)

4 \* \* \* \* \*

5  
6 I, Mechelle Daniel, Federal Official Court Reporter in and  
7 for the United States District Court for the Northern District  
8 of Texas, do hereby certify pursuant to Section 753,  
9 Title 28, United States Code, that the foregoing is a true and  
10 correct transcript of the stenographically reported proceedings  
11 held in the above-entitled matter and that the transcript page  
12 format is in conformance with the regulations of the Judicial  
13 Conference of the United States.

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s/ Mechelle Daniel **DATE** JUNE 13, 2016

MECHELLE DANIEL, CSR #3549  
FEDERAL OFFICIAL COURT REPORTER